State of California
AIR RESOURCES BOARD

Resolution 85-30

June 28, 1985

Agenda Item: 85-10-2

WHEREAS, the Air Resources Board (the "Board") has established state ambient air quality standards for sulfates, suspended particulate matter ($PM_{10}$), sulfur dioxide, and visibility-reducing particles and has also established an air quality criterion for sulfate/ozone episodes;

WHEREAS, the Environmental Protection Agency (EPA) has established national ambient air quality standards (NAAQS) for total suspended particulate matter and has proposed a NAAQS for suspended particulate matter ($PM_{10}$);

WHEREAS, the federal Clean Air Act (42 USC Section 7401 et seq.; see Sections 7410 and 7502) requires the state to attain and maintain the NAAQS for total suspended particulate matter as expeditiously as practicable and no later than December 31, 1982;

WHEREAS, Health and Safety Code Sections 39600, 39601, 43013, 43101 and Western Oil and Gas Ass'n. v. Orange County APCD, 14 Cal.3d 411 (1975), authorize the Board to implement, interpret, or make specific Health and Safety Code Sections 39000, 39001, 39002, 39006, 43000, 43013 and 43101, and Western Oil and Gas Ass'n. v. Orange County APCD, 14 Cal.3d 411 (1975), by adopting regulations governing the composition of motor vehicle fuels as they affect motor vehicle emissions;

WHEREAS, Title 13, California Administrative Code, Sections 2252(d) and following were adopted by the Board in 1981 and prohibit, effective January 1, 1985, any person from selling, producing for sale, offering for sale, or delivering for sale in the South Coast Air Basin or Ventura County (the "control area") any diesel fuel for use in motor vehicles which has a sulfur content greater than 500 parts per million, subject to an exemption in Section 2252(h) for specified amounts of diesel fuel produced in the control area by small refiners, reporting requirements in Sections 2252(h) and (i), and provisions for variances in Section 2252(j);

WHEREAS, the Board's staff has investigated the impacts of limiting and/or ultimately eliminating the small refiner exemption in Title 13, California Administrative Code, Section 2252(h) as directed by the Board under Resolution 84-53, and has prepared two reports on this subject which include proposed amendments to Section 2252 for the Board's consideration;

WHEREAS, the proposed amendments prepared by the Board's staff would also clarify the small refiner exemption provisions, control the sulfur content of motor vehicle diesel fuel dispensed by bulk purchaser-consumers, and clarify or modify various provisions including record-keeping and reporting requirements, variance standards and procedures, and identification of violations;

WHEREAS, Title 13, California Administrative Code, Sections 2252(a)-(c) prohibit after January 1, 1982 the sale, offer for sale, or delivery for sale at retail in California of any unleaded gasoline having a sulfur content greater than 300 parts per million, subject to the provisions for variances in Section 2252(j);

WHEREAS, the proposed amendments prepared by the Board's staff additionally would modify the identification of violations in Section 2252(a) and revise the applicable test method for determining the sulfur content of unleaded gasoline;

WHEREAS, the California Environmental Quality Act and Board regulations require that no project having significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce and avoid such impacts;

WHEREAS, the Board has considered the impacts of the amendments on the state's economy, including the impacts on small refiners;

WHEREAS, the Board has held a duly noticed public hearing at which it considered the reports prepared and submitted to it by the staff and has heard and considered the comments presented by representatives of the districts, affected industries, and other interested persons and agencies; and

WHEREAS, the Board finds that:

Sulfur dioxide emissions from motor vehicles contribute to ambient concentrations of sulfates, total suspended particulate matter, suspended particulate matter ($PM_{10}$), sulfur dioxide, and visibility reducing particles;

NAAQS for total suspended particulate matter are frequently violated in the South Coast Air Basin and Ventura County;

State ambient standards for sulfates, suspended particulate matter ($PM_{10}$) and visibility reducing particles are frequently violated in the South Coast Air Basin;

The volume of motor vehicle diesel fuel currently exempted under Section 2252(h) has the potential to result in sulfur dioxide emissions nearly twice as high as was estimated under worst-case conditions when the sulfur content of motor vehicle diesel fuel limits were adopted;

A reduction in the small refiner exempt volume would reduce the maximum allowable sulfur dioxide emissions below the level allowed under the existing regulation;

Elimination of the small refiner exemption would result in significant reductions in sulfur dioxide emissions and thereby would have positive air quality impacts by reducing ambient concentrations of sulfates, total suspended particulate matter, suspended particulate matter ($PM_{10}$), and sulfur dioxide in the control area;

It is technologically feasible for small refiners to produce diesel fuel for use in motor vehicles in the control area under Section 2252(d) with a reduced and/or eliminated small refiner exemption;

The cost-effectiveness ratios of reducing sulfur dioxide emissions and suspended particulate matter concentrations in the control area through the desulfurization of motor vehicle diesel fuel by small refiners are in the range of the cost-effectiveness ratios of other control measures adopted to reduce those pollutants;

The economic impacts of the amendments on small refiners are warranted in light of the need to protect the public health and specifically to reduce sulfur-related emissions in the South Coast Air Basin;

The amendments to the small refiner exemption provisions set forth in Attachment A are necessary and appropriate to attain and maintain in the control area separately and independently the state and national ambient air quality standards referred to above;

The amendments set forth in Attachment A which clarify and refine the various provisions of Section 2252 are necessary and appropriate to make the terms of the regulation more precise, control more completely the sulfur content of diesel fuel sold for use in motor vehicles in the control area, enhance enforceability of the sulfur content limits, and eliminate unnecessary routine reports; and

The amendments adopted herein will have no significant adverse environmental impacts.

NOW, THEREFORE BE IT RESOLVED, that the Board approves the amendments to Title 13, California Administrative Code, Section 2252, as set forth in Attachment A, with the modifications approved by the Board.

BE IT FURTHER RESOLVED, that the Board directs the Executive Officer to incorporate into Attachment A the modifications approved by the Board and to adopt the amendments set forth in Attachment A as so modified after making them available to the public for a period of 15 days, and with such minor modifications as may be appropriate in light of written comments submitted during this period, provided that the Executive Officer shall present the regulations to the Board for further consideration if he determines that this is warranted in light of the written comments received.

I hereby certify that the above is a true and correct copy of Resolution 85-30, as adopted by the Air Resources Board.

Harold Holmes

Harold Holmes, Board Secretary

ATTACHMENT A

June 18, 1985

Proposed Amendments to Section 2252,

Title 13, California Administrative Code,

Including Modifications to Original Staff Proposal*

Amend Section 2252, Title 13, California Administrative Code, as follows:

2252. Sulfur Content.

(a) No person shall sell, offer for sale, or ~~deliver for sale at retail~~ supply in California, as a fuel for motor vehicles, any unleaded gasoline which has a sulfur content ~~greater than 400 parts per million by weight after November 13, 1978 or~~ greater than 300 parts per million by weight ~~after January 1, 1982~~.

(b) The maximum sulfur content limitations specified in the foregoing sub~~division~~section (a) shall be determined by ASTM Test Method D 2622-~~77~~82, or any other test method determined by the executive officer to give equivalent results.

(c) For the purposes of this section, the term "unleaded gasoline" shall mean gasoline with a lead content no greater than 0.05 gram per gallon as determined by ASTM Test Method D3237-~~73~~79.

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* This text indicates in underline and strikeout form the amendments contained in the original staff proposal released March 11, 1985. Modifications to that proposal are indicated by double underlines for additions and slashes for deletions.

(d)(1) ~~Effective-January-1,-1985,~~ No person shall, in the south coast control area, sell, ~~produce-for-sale,~~ offer for sale, or ~~deliver-for-sale-in-the-South-Coast-Air-Basin-or-Ventura-County~~ transfer any diesel fuel, ~~except-that~~ which at the time of such transaction constitutes diesel fuel for use in motor vehicles in the south coast control area, and which is not specifically exempted by the ~~Executive-Officer~~ executive officer pursuant to ~~subdivision~~section (h), ~~for-use-in-motor-vehicles-which~~ unless the diesel fuel has a sulfur content ~~greater-than~~ not exceeding 500 parts per million ~~(0.05 percent)~~ by weight.

(2) No person shall, in the south coast control area, sell, offer for sale, or transfer any diesel fuel which at the time of such transaction constitutes diesel fuel for use in motor vehicles in the south coast control area, and which is exempted by subsection (h) from the provisions of subsection (d)(1), unless the diesel fuel has a sulfur content not exceeding 5,000 parts per million by weight.

(3) No bulk purchaser-consumer shall, in the south coast control area, dispense into fuel tanks of motor vehicles owned or operated by the bulk purchaser-consumer any diesel fuel purchased or otherwise obtained by the bulk purchaser-consumer, except diesel fuel specifically exempted by the executive officer pursuant to subsection (h), which has a sulfur content greater than 500 parts per million by weight.

(4) Nothing in this subsection (d) shall prohibit a person from blending diesel fuel for use in motor vehicles in the south coast control area which is exempt from subsection (d)(1) pursuant to subsection (h) and which has a sulfur content not exceeding 5,000 parts per million with diesel fuel for use in motor vehicles in the south coast control area which is subject to

subsection (d)(1) and has a sulfur content not exceeding 500 parts per million, and selling, offering for sale, transferring or dispensing the resulting blend.

(5) The provisions of subsections (d)(1) ~~and (2)~~ shall not apply to a sale, offer for sale, or transfer of diesel fuel to a ~~producer~~ refiner where the ~~producer~~ refiner further processes the diesel fuel at the refiner's refinery prior to any subsequent sale, offer for sale, or transfer of the diesel fuel.

(6) For the purposes of this subsection (d), each sale of diesel fuel at retail in the south coast control area for use in a motor vehicle, and each dispensing of diesel fuel in the south coast control area into a motor vehicle by a bulk purchaser-consumer, shall also be deemed a sale by any person who previously sold such diesel fuel in violation of subsections (d)(1) or (d)(2).

(e) The sulfur content limitation specified in subsection (d) shall be determined by ASTM Test Method D 2622-~~(7782)~~, or any other test method determined by the executive officer to give equivalent results.

(f) For the purposes of this section, ~~the term~~

(1) "Diesel fuel" ~~shall~~ means any ~~petroleum distillate as defined by ASTM Test Method D 975 (77), excluding No. 4-D~~ fuel that is commonly or commercially known, sold or represented as diesel fuel No. 1-D or No. 2-D, pursuant to the specifications in ASTM Standard Specification for Diesel Fuel Oils D 975-81.

(2) "Motor vehicle" has the same meaning as defined in Section 415 of the Vehicle Code.

(3) "South coast control area" means Ventura County and the South Coast Air Basin, as defined in Title ~~13~~ 17, California Administrative Code, Section 60104, as it existed on January 1, 1985.

(4) "Diesel fuel for use in motor vehicles in the south coast control area" means any diesel fuel (i) which is not conspicuously identified as a fuel which may not lawfully be dispensed into motor vehicle fuel tanks in the south coast control area; or (ii) which the person selling, offering for sale, transferring, or dispensing the diesel fuel knows will be dispensed into motor vehicle fuel tanks in the south coast control area; or (iii) which, in the case of a sale or transfer, the person selling or transferring the diesel fuel in the exercise of reasonable prudence should know will be dispensed into motor vehicle fuel tanks in the south coast control area, and that is not the subject of a declaration under penalty of perjury by the purchaser or transferee stating that s/he will not sell, offer for sale, or transfer the fuel for dispensing, or dispense the fuel, into motor vehicle fuel tanks in the south coast control area.

(5) "Refiner" means any person who owns, leases, operates, controls or supervises a refinery.

(6) "Refinery" means a facility that produces liquid fuels by distilling petroleum, and all bulk storage and bulk distribution facilities jointly owned or leased with the facility that produces liquid fuels by distilling petroleum.

(7) "Bulk purchaser-consumer" means a person that purchases or otherwise obtains diesel fuel in bulk and then dispenses it into the fuel tanks of motor vehicles owned or operated by the person.

(8) "Produce" means to convert liquid compounds which are not diesel fuel into diesel fuel; provided that when a person blends volumes of blendstocks which are not diesel fuel with volumes of diesel fuel acquired from another person, and the resulting blend is diesel fuel, the person

conducting such blending has produced the entire volume of the resulting blend and the person who initially converted non-diesel compounds into the acquired diesel fuel has also produced the volume of acquired diesel fuel. ~~The blending of volumes of~~ When a person blends diesel fuel with other volumes of diesel fuel, without the addition of blendstocks which are not diesel fuel, ~~is not production of~~ the person does not produce diesel fuel.

(9) "Producer" means any person who produces in the south coast control area diesel fuel for use in motor vehicles in the south coast control area.

(10) "Transfer" means to relinquish possession to another person, and includes a relinquishment of possession as part of an exchange.

(11) "Calendar quarter" means each of the following three-month periods: January-March, April-June, July-September, and October-December.

(12) "Stream day" means 24 consecutive hours of actual operation of a refinery.

(13) "Baseline production" means for each small refiner the highest annual volume of diesel fuel produced at the small refiner's refinery(ies) in the south coast control area in 1978, 1979 and 1980 and reasonably likely dispensed into motor vehicle fuel tanks, as determined by the executive officer as of December 1, 1985.

(14) "Annual base exempt amount" for a calendar year means, for each small refiner covered by an exemption issued by the executive officer and in effect on December 1 of the previous year, that proportion of 6,132,000 barrels that the small refiner's baseline production bears to the total baseline production of all small refiners who have exemptions issued by the executive officer and in effect on December 1 of the previous year.

(g) For the purposes of this section, the term "small refiner" shall mean any refiner who owns or operates a refinery (or refineries) located in the ~~South Coast Air Basin and/or Ventura County~~ south coast control area that:

(1) Has ~~with~~ and at all times had since January 1, 1978, a total combined crude oil capacity of not more than 50,000 barrels per stream day; and

(2) Was used at some time during 1978, 1979, or ~~and~~ 1980, to produce diesel fuel which was reasonably likely dispensed into motor vehicle fuel tanks; and

(3) Is not currently owned or controlled by any refiner that owns or controls ~~and who does not own or operate~~ refineries in the United States with a total combined crude oil capacity of more than 137,500 barrels per stream day; and

(4) Was the subject of an application for a small refiner exemption filed pursuant to subsection (h) before June 28, 1985.

(h)(1) The provisions of subsection (d)(1) shall not apply to ~~an~~ the amount of diesel fuel that is produced by a small refiner ~~as defined in subsection (g)~~ at the small refiner's refinery in the ~~South Coast Air Basin and/or Ventura County~~ south coast control area and that is first consecutively transferred from the small refiner's refinery in each calendar year for use in motor vehicles in the south coast control area, equal to ~~120 percent~~ ~~[Option I: 36 percent; Option II: 44 percent; Option III: 84 percent] of the~~ ~~highest annual volume of diesel fuel produced by the small refiner in the South Coast Air Basin and/or Ventura County of the three calendar years immediately preceding the date of adoption of subsection (d)~~ ~~SOUTH COAST CONTROL AREA IN 1978, 1979, AND 1980 AND REASONABLY LIKELY DISPENSED INTO~~

motor vehicle fuel tanks. the small refiner's annual base exempt amount with adjustments made in accordance with this section. In no event shall a small refiner's exemption for a calendar year exceed 120 percent of the small refiner's baseline production. Diesel fuel which is designated by the small refiner as not exempt from the provisions of subsection (d)(1), and which is reported to the executive officer or his/her designee pursuant to a protocol entered into between the small refiner and the executive officer or his/her designee, shall not be counted against the exempt amount and shall not be subject to the exemption. A small refiner that blends a gasoline for use in motor vehicles in the South Coast Control Area and the small refiner did not produce and which is not diesel fuel to produce diesel fuel from subsection (d)(1) shall be deemed to have produced the entire resulting blend. This exemption shall not apply to any fuel not produced in the ~~South Coast Air Basin or Ventura County~~ south coast control area. This exemption shall not apply to any diesel fuel transferred from a small refiner's refinery(s) in any calendar quarter in which less than 25 percent of the diesel fuel transferred from the small refiner's refinery(s) in the south coast control area was produced by distillation of crude oil at the small refiner's refinery(s).

(2) When the executive officer determines that a small refiner did not in a calendar quarter transfer from its refinery(s) in the south coast control area any diesel fuel which was covered by an exemption issued to the small refiner under this subsection (h), the small refiner's annual base exempt amount for that calendar year shall be reduced by the portion of the small refiner's remaining unused annual base exempt amount for the calendar

year that the small refiner would have transferred in the calendar quarter had the small refiner evenly distributed transfers of the entire unused annual base exempt amount over that calendar quarter and any remaining calendar quarters in the calendar year; provided that in no case may a reduction for any quarter exceed 25 percent of the small refiner's full annual base exempt amount. If within 15 days after the close of a calendar quarter a small refiner submits documentation which demonstrates to the satisfaction of the executive officer that the small refiner did not transfer in the calendar quarter any diesel fuel which would be covered by an exemption under subsection (h)(1) due to an irresistible, superhuman cause, the small refiner's annual base exempt amount shall not be reduced on account of inactivity during that quarter. The executive officer shall make determinations pursuant to this subsection (h)(2) within 45 days after the end of each calendar quarter. The executive officer's determination regarding the small refiner's transfer in a calendar quarter shall be based on the reports required pursuant to subsection (h)(5) which are filed within the applicable time limits by the small refiner, and on any investigation deemed appropriate by the executive officer.

(3) Whenever a small refiner's annual base exempt amount is reduced pursuant to subsection (h)(2) on account of inactivity during a calendar quarter, the executive officer shall reallocate the amount reduced to the other small refiners who transferred in the calendar quarter diesel fuel which was covered by an exemption under subsection (h)(1). The portion of the amount reduced which is reallocated to each other small refiner shall be based on the proportion which each other small refiner's baseline production bears to the total baseline production of all small refiners qualified to

receive the reallocation. The executive officer shall make such reallocations within 45 days after the end of such calendar quarter. Reallocations resulting from reductions applied on the basis of a small refiner's inactivity in the first, second, or third calendar quarters may only be used in that same calendar year by the small refiners receiving the reallocations. Reallocations resulting from reductions applied on the basis of a small refiner's inactivity in the fourth calendar quarter of a year may only be used in the following calendar year by the small refiners receiving the reallocation. No amounts reallocated pursuant to this subsection (h)(3) shall be considered in the calculation of reductions pursuant to subsection (h)(2).

~~(2)~~ (4) To qualify for ~~this~~ exemption under this subsection (h), a refiner shall submit to the ~~Executive Officer of the Air Resources Board~~ executive officer an Application for Exemption under penalty of perjury, on a form provided by the executive officer, for each of the small refiner's refineries in the south coast control area which shall specify the quantity and ASTM grade of diesel fuel produced at each refinery in the ~~South Coast Air Basin or Ventura County~~ south coast control area during each of the three calendar years 1978, 1979, and 1980 ~~immediately preceding the date of adoption of subsection (d)~~ and reasonably likely dispensed into motor vehicle fuel tanks, ~~data on~~ the crude oil capacity ~~and ownership for the refineries which it owns and operates in the South Coast Air Basin and/or Ventura County and in the United States~~ of the refinery at all times since January 1, 1978, the crude oil capacity of all refineries in the United States which are owned or controlled by, or under common ownership or control with, the small refiner, and data demonstrating that the refinery has the capacity to produce liquid

fuels by distilling petroleum. Within 90 days of receipt of the application, the ~~Executive Officer~~ executive officer ~~of the Air Resources Board~~ shall grant or deny the exemption, in writing. The exemption shall be granted if the ~~Executive Officer~~ executive officer determines that the applicant has demonstrated that s/he meets the provisions of this subsection and subsection (g) ~~and shall be rescinded when such provisions are no longer met~~, and shall identify the ~~annual amount of diesel fuel covered by the exemption~~ small refiner's baseline production. ~~The executive officer shall modify the exemption if s/he is satisfied by new evidence that the small refiner is entitled to an exemption for an amount of diesel fuel other than the amount stated in the issued exemption.~~ The exemption shall immediately cease to apply at any time the refiner ceases to meet the definition of small refiner in subsection (g).

~~(3)~~ (5) In addition to the ~~reporting~~ requirements of subsection (i) below, ~~beginning on January 1, 1985,~~ each small refiner who is ~~granted~~ covered by an exemption in effect on December 1 of any year shall ~~report on a quarterly basis~~ submit to the ~~Executive Officer of the Air Resources Board~~ executive officer reports containing the ~~following~~ information ~~which~~ set forth below for the following year. The reports shall be excecuted in California under penalty of perjury, and must be received within the time indicated below:

(i) The quantity, ~~and~~ ASTM grade, sulfur content and batch identification of all diesel fuel, produced by the small refiner in the ~~South Coast Air Basin and Ventura County~~ south coast control area, ~~during that calendar quarter.~~ that is transferred from the small refiner's refinery(s) in each month for sale in the south coast control area for use in motor vehicles

in the south coast control area, within 15 days after the end of the month; ~~Such reports shall be provided within 45 days of the close of each quarter. Each such refiner shall also be required to report to the Executive Officer.~~

(ii) For each calendar quarter, ~~the percentage~~ a statement whether 25 percent or more of the diesel fuel transferred from the small refiner's refinery(s) in the south coast control area ~~that~~ was produced by distillation of crude oil at the small refiner's refinery(s), within ~~30~~ 15 days after the close of such quarter;

(iii) The date, if any, on which the small refiner completes transfer from its small refinery(s) in the south coast control area in a calendar year of the maximum amount of diesel fuel for use in motor vehicles which is exempt from subsection (d)(1) pursuant to subsection (h), within five days after such date;

(iv) within ~~90~~ 30 days after ~~of~~ project completion, any refinery addition or modification which would affect the ~~crude oil capacity for refineries owned and operated in the South Coast Air Basin, Ventura County and the United States~~ qualification of the refiner as a small refiner pursuant to subsection (g); and

(v) any change of ownership of the small refiner or the small refiner's refinery, within 30 days after such change of ownership.

~~(4)~~ (6) Whenever a small refiner fails to provide records identified in subsection (h)~~(3)~~(5)(i) or (ii) in accordance with the requirements of those subsections, the diesel fuel for use in motor vehicles in the south coast control area transferred by the small refiner from the small refiner's refinery in the time period of the required records shall be presumed to have been sold by the small refiner in violation of subsection (d)(1).

(i)(1) Each producer ~~refiner~~ shall ~~perform sampling~~ sample and ~~testing~~ test for sulfur content each final blend of ~~the~~ diesel fuel for use in motor vehicles in the south coast control area produced ~~stored in all refinery tank(s) owned or operated~~ by the producer in the ~~South Coast Air Basin and Ventura County~~ south coast control area ~~as set forth in this subsection~~, in accordance with an applicable test method identified in subsection (e). If a producer ~~refiner~~ blends diesel fuel components directly to pipelines, tankships, railway tankcars or trucks and trailers, the loading(s) shall be sampled and tested for sulfur content by the refiner or authorized contractor. ~~All sampling and testing shall be performed a minimum of four times per month at least six days apart and the results shall be reported individually (and, for information purposes only, as a diesel fuel production weighted average sulfur content) to the Executive Officer of the Air Resources Board within 45 days of the close of each quarter.~~ The producer shall maintain, for two years from the date of each sampling, records showing the sample date, product sampled, container or other vessel sampled, and the sulfur content. In the event a ~~refiner~~ producer ~~in the South Coast Air Basin or Ventura County produces~~ sells, offers for sale, or transfers diesel fuel in the south coast control area which is not ~~specifically~~ exempt under subsection (h) from the provisions of subsection (d)(1) ~~with~~ and which has a sulfur content exceeding the standard set forth ~~that allowed~~ in subsection (d)(1), such ~~refiner~~ producer shall maintain, for two years from the date of any sale or transfer of the fuel, records ~~acceptable to the Executive Officer of the Air Resources Board which show~~ demonstrating that the diesel fuel ~~is being produced for transhipment out of the South Coast Air Basin or Ventura County or sold for non vehicular use~~ was not diesel fuel for use in motor vehicles in

the south coast control area when it was sold or transferred by the producer. ~~Failure to provide such documentation upon request shall be deemed a violation of subsection (d).~~ All diesel fuel produced in the south coast control area by the producer and not tested as diesel fuel for use in motor vehicles by the producer pursuant to this subsection shall be deemed to have a sulfur content exceeding 500 parts per million or 5,000 parts per million if it was subject to a small refiner exemption pursuant to subsection (h), unless the producer provides to the executive officer upon request test results demonstrating that the diesel fuel has a sulfur content not exceeding 500 parts per million or 5,000 parts per million respectively.

(2) Each person importing ~~diesel fuel for sale~~ into the ~~South Coast Air Basin or Ventura County~~ south coast control area any diesel fuel for use in motor vehicles in the south coast control area, by tankship, pipeline, railway tankcars, ~~or~~ trucks and trailers, or other means, shall sample and test for sulfur content each final blend of such diesel fuel. ~~The results of such tests shall be reported on a quarterly basis to the Executive Officer of the Air Resources Board within 45 days of the close of each quarter.~~ The importer shall maintain, for two years from the date of each sampling, records showing the sample date, product sampled, container or other vessel sampled, and the sulfur content.

(3) A producer or importer shall provide to the executive officer any records required to be maintained by the producer or importer pursuant to this subsection (i) within 20 days of any written request received from the executive officer or his/her designee before expiration of the required period of maintenance. Whenever a producer or importer fails to provide records regarding a final blend of diesel fuel for use in motor vehicles in the south

coast control area in accordance with the requirements of this subsection, the final blend of diesel fuel shall be presumed to have been sold by the producer in violation of subsection (d)(1).

~~(3)~~ (4) The ~~Executive Officer of the Air Resources Board~~ executive officer may perform any sampling and testing deemed necessary to determine compliance by any person with the requirements of subsection (d) and may require that special samples be drawn and tested at any time.

(j) The executive officer or his/her designee may enter into a protocol with any producer, importer, or person who sells, offers for sale, or transfers diesel fuel to a producer for the purpose of specifying alternative sampling, testing, recordkeeping, or reporting requirements which shall satisfy the provisions of subsections (i)(1), (i)(2), or (h)~~(3)~~(5). The executive officer or his/her designee may only enter into such a protocol if s/he reasonably determines that application of the regulatory requirements under the protocol will not have a significant adverse effect on the state board's ability to enforce the provisions of subsection (d).

(k) The provisions of subsection (g) and (h) as they existed immediately prior to the amendments adopted on [date of adoption] shall continue to be effective through December 31, 1985. Within 20 days after the amendments to subsections (g) and (h) adopted on [date of adoption] are filed with the Secretary of State, any person who had ~~received~~ before June 28, 1985, applied for a small refiner exemption ~~which was in effect as of [date of adoption]~~ under subsection (h) shall ~~either submit~~ mail or hand deliver to the executive officer either an Application for Exemption pursuant to subsection (h)(2) as it was amended on [date of adoption], or ~~notify the executive officer~~ a notification that the small refiner has determined that it will not

qualify for a small refiner exemption under the amendments adopted on [date of adoption]. No small refiner shall be eligible for an exemption under the provisions of subsections (g) and (h) as they were amended on [date of adoption] unless the small refiner has mailed or hand delivered an Application for Exemption within the time limits set forth in this subsection (k).

(l) Any variance from the requirements of subsection (a) or (d) issued by the executive officer before the effective date of subsection (m) shall not be affected by those amendments.

~~(j)(1) Any person who cannot comply with the requirements set forth in subdivision (a) or (d) of this section because of unreasonable economic hardship, unavailability of equipment or lack of technological feasibility may apply to the Executive Officer of the Air Resources Board for a variance. The application shall set forth:~~

~~(A) the specific grounds upon which the variance is sought;~~

~~(B) the proposed date(s) by which compliance with the sulfur content limitations in subdivision (a) or (d) will be achieved; and~~

~~(C) a plan reasonably detailing the method by which compliance will be achieved.~~

~~(2) Upon receipt of an application for a variance, the Executive Officer shall hold a hearing to determine whether, and under what conditions and to what extent, a variance from the requirements established by subdivision (a) or (d) of this section is necessary and will be permitted. Notice of the time and place of the hearing shall be sent to the applicant by certified mail not less than 30 days prior to the hearing. Notice of the hearing shall also be published in at least one newspaper of general circulation and shall be sent to every person who requests such notice, not less than 30 days prior to the hearing.~~

~~(3)-At-least-30-days-prior-to-the-hearing,-the-application-for-the variance-shall-be-made-available-to-the-public-for-inspection.--Interested members-of-the-public-shall-be-allowed-a-reasonable-opportunity-to-testify-at the-hearing-and-their-testimony-shall-be-considered.~~

~~(4)-No-variance-shall-be-granted-unless-all-of-the-following-findings are-made:~~

~~(A)-that-the-applicant-for-the-variance-is,-or-will-be,-in-violation of-the-requirements-established-by-subdivision-(a)-or-(d)-of-this-regulation;~~

~~(B)-that,-due-to-unreasonable-economic-hardship,-unavailability-of equipment-or-lack-of-technological-feasibility-beyond-the-reasonable-control of-the-applicant,-requiring-compliance-would-result-in-either-(i)-an-arbitrary or-unreasonable-taking-of-property,-or-(ii)-the-practical-closing-and elimination-of-a-lawful-business;-and~~

~~(C)-that-such-taking-or-closing-would-be-without-a-corresponding benefit-in-reducing-air-contaminants.~~

~~(5)-Any-variance-order-shall-include-the-date(s)-by-which-compliance with-the-sulfur-content-limitation-in-subdivision-(a)-or-(d)-will-be-achieved and-any-other-condition(s)-including,-where-appropriate,-increments-of progress,-that-the-Executive-Officer-of-the-Air-Resources-Board,-as-a-result-of the-testimony-received-at-the-hearing,-finds-necessary.~~

~~(6)-If-the-Executive-Officer-determines-that,-due-to-conditions beyond-the-reasonable-control-of-the-applicant,-the-applicant-needs-an immediate-variance-from-the-requirements-established-by-subdivision-(a)-or-(d) of-this-section,-the-Executive-Officer-may-hold-a-hearing-without-complying with-the-provisions-of-subdivision-(j)(2)-or-subdivision-(j)(3)-above.--No variance-granted-under-the-provisions-of-this-paragraph-may-extend-for-a-~~

~~period-of-more-than-45-days.--The-Executive-Officer-shall-maintain-a-list-of persons-who-in-writing-have-informed-the-Executive-Officer-of-their-desire-to be-notified-by-telephone-in-advance-of-any-hearing-held-pursuant-to-this subdivision,-and-shall-provide-advance-telephone-notice-to-any-such-person.~~

~~(7)-Upon-the-application-of-any-person,-the-Executive-Officer-of-the Air-Resources-Board-may-review-and-for-good-cause-modify-or-revoke-a-variance from-the-requirements-of-subdivision-(a)-or-(d)-after-holding-a-hearing-in accordance-with-the-provisions-of-this-subdivision.~~

(m)(1) Any person who cannot comply with the requirements set forth in subsections (a) or (d)(1) because of extraordinary reasons beyond the person's reasonable control may apply to the executive officer for a variance. The application shall set forth:

(A) the specific grounds upon which the variance is sought;

(B) the proposed date(s) by which compliance with the provisions of subsections (a) or (d)(1) will be achieved; and

(C) a plan reasonably detailing the method by which compliance will be achieved.

(2) Upon receipt of an application for a variance containing the information required in subsection (m)(1), the executive officer shall hold a hearing to determine whether, and under what conditions and to what extent, a variance from the requirements established by subsections (a) or (d)(1) is necessary and will be permitted. Notice of the time and place of the hearing shall be sent to the applicant by certified mail not less than 20 days prior to the hearing. Notice of the hearing shall also be submitted for publication in the California Administrative Notice Register and sent to every person who requests such notice, not less than 20 days prior to the hearing.

(3) At least 20 days prior to the hearing, the application for the variance shall be made available to the public for inspection. Interested members of the public shall be allowed a reasonable opportunity to testify at the hearing and their testimony shall be considered.

(4) No variance shall be granted unless all of the following findings are made:

(A) that, because of reasons beyond the reasonable control of the applicant, requiring compliance with subsections (a) or (d)(1) would result in an extraordinary economic hardship;

(B) that the public interest in mitigating the extraordinary hardship to the applicant by issuing the variance outweighs the public interest in avoiding any increased emissions of air contaminants which would result from issuing the variance.

(C) that the compliance plan proposed by the applicant can reasonably be implemented and will achieve compliance as expeditiously as possible.

(5) Any variance order shall specify a final compliance date by which the requirements in subsections (a) or (d)(1) will be achieved. Any variance order shall also contain a condition that specified increments of progress necessary to assure timely compliance be achieved, and such other conditions, including limitations on the sulfur content of unleaded gasoline or diesel fuel produced for use in motor vehicles, that the executive officer, as a result of the testimony received at the hearing, finds necessary to carry out the purposes of Division 26 of the Health and Safety Code.

(6) The executive officer may require, as a condition of granting a variance, that a cash bond, or a bond executed by two or more good and sufficient sureties or by a corporate surety, be posted by the party to whom

the variance was granted to assure performance of any construction, alteration, repair, or other work required by the terms and conditions of the variance. Such bond may provide that, if the party granted the variance fails to perform such work by the agreed date, the cash bond shall be forfeited to the state board, or the corporate surety or sureties shall have the option of promptly remedying the variance default or paying to the state board an amount, up to the amount specified in the bond, that is necessary to accomplish the work specified as a condition of the variance.

(7) No variance from the requirements set forth in subsection (d)(1) based on a plan for compliance which includes the installation of major additional equipment shall have a duration of more than three years.

(8) No variance which is issued due to conditions of breakdown, repair, or malfunction of equipment shall have a duration, including extensions, of more than six months.

(9) The executive officer may, after holding a hearing without complying with the provisions of subsections (m)(2) and (3), issue an emergency variance to a person from the requirements of subsections (a) or (d)(1) upon a showing of reasonably unforeseeable extraordinary hardship and good cause that a variance is necessary. In connection with the issuance of an emergency variance, the executive officer may waive the requirements of subsection (m)(6). No emergency variance may extend for a period of more than 45 days. If the applicant for an emergency variance does not demonstrate that he or she can comply with the provisions of subsections (a) or (d)(1) within such 45-day period, an emergency variance shall not be granted unless the applicant makes a prima facie demonstration that the findings set forth in subsection (m)(4) should be made. The executive officer shall maintain a list

of persons who have informed the executive officer in writing of their desire to be notified by telephone in advance of any hearing held pursuant to this paragraph (m)(9), and shall provide advance telephone notice to any such person.

(10) A variance shall cease to be effective upon failure of the party to whom the variance was granted substantially to comply with any condition.

(11) Upon the application of any person, the executive officer may review and for good cause modify or revoke a variance from the requirements of subsections (a) and (d)(1) after holding a hearing in accordance with the provisions of subsections (m)(2) and (3).

[Option/1]

(n) The provisions of subsection (h) shall not be effective after December 31, 1988. After December 31, 1988, diesel fuel produced by small refiners for sale in the south coast control area for use in motor vehicles shall not be exempt from the provisions of subsection (d)(1).

[Option/2]//[No/subsection/(n)]

NOTE: Authority cited: Sections 39600, 39601, 43013 and 43101, Health and Safety Code; and Western Oil and Gas Association v. Orange County Air Pollution Control District, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: Sections 39000-39003, 39500, 39515, 39516, 39606, 41511, 43000, 43013, 43016, and 43101, Health and Safety Code; and Western Oil and Gas Association v. Orange County Air Pollution Control District, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

State of California

# Memorandum

To : Gordon Van Vleck
Secretary
Resources Agency

Date : August 5, 1985

Subject : Filing of Notice of Decisions of the Air Resources Board

From : Harold Holmes
Board Secretary
Air Resources Board

Pursuant to Title 17, Section 60007 (b), and in compliance with Air Resources Board certification under Section 21080.5 of the Public Resources Code, the Air Resources Board hereby forwards for posting the attached notice of decisions and response to environmental comments raised during the comment period.

ATTACHMENTS
85-6
85-27
85-30
85-63

FILED AND POSTED BY
OFFICE OF THE SECRETARY
AUG 05 1985
Resources Agency of California

State of California
AIR RESOURCES BOARD

Response to Significant Environmental Issues

Item: Public Hearing to Consider Amendments to Regulation Limiting the Sulfur Content of Motor Vehicle Diesel Fuel in the South Coast Air Basin and Ventura County and Limiting the Sulfur Content of Unleaded Gasoline

Agenda Item Nos.: 85-6-2
85-10-2

Public Hearing Date: April 26, 1985
June 28, 1985

Response Date: October 2, 1985

Issuing Authority: Air Resources Board

Comment: Several comments were received identifying significant environmental issues pertaining to this item. These comments are summarized and responded to in the Final Statement of Reasons, Section III (Comments and Agency Responses), which is incorporated herein by reference.

Response: See above.

Certified: _____
Board Secretary

Date: 10-22-85